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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/260,802	03/02/1999	STEVEN M. HOFFBERG	3459-11	6940

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INTELLECTUAL PROPERTY LAW  
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SUITE 460  
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EXAMINER

GORDON, PAUL P

ART UNIT	PAPER NUMBER
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2121

DATE MAILED: 04/09/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/260,802

Applicant(s)

Hoffberg et al.

Examiner

Gordon

Art Unit

2121

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 35-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_.

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 36-39, 41-46, 48-54, 56, 57, 59-65 are rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The 35 U.S.C. §112, first paragraph rejection in the previous office action is incorporated herein by reference.

3. Claims 35-40, 47, 48, 50-52, 54-56, 58-60, and 63 are rejected under 35 U.S.C. §103(a) as being unpatentable over Yourick et al. (4,775,935) in further view of Lockwood (4,567,359).

With regard to claims 35, 40, 47, 55, 58 Yourick teach a system and method which store item records and present related items to user's who selectively access and query interesting items (col. 4, lines 65-66; interface 7). The selected items of interest are stored as a consumer profile uniquely and historically related to each and every user of the system (see col. 5, Tables 1-3; col. 4, lines 64-68; col. 8, lines 60-62). Items presented (col. 8, lines 63-64) to the users are monitored by the system and based upon the user's interest or feedback (Table 1) a consumer profile is created and stored. The user feedback is monitored and used to update the consumer profile and related records in storage. Yourick does not teach storing and

updating a persistent(individual) user-specific profile for each system user or consumer. It appears that Yourick does update user profiles(col. 9, lines 55+), however, the user profile updated is an aggregate profile of every user who has used the system prior to the update. In column 10, lines 15-17, Yourick suggests keeping relevant data created by a user while viewing items of interest. The Lockwood reference teaches storing user interest profiles and updating them based on monitored user input(col. 7, line 61 thru col. 8, line 2). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to maintain profiles on individual users rather than aggregate users because Yourick suggests keeping data for each user and Lockwood's system updates user profiles based on each individual user input alone.

With regard to claims 36-39, 48, 50, and 56, Yourick teach a system and method for automatically presenting information items of interest to users. The system includes a computer and memory for storing the item records and an access or terminal device for enabling users to communicate and access the stored items. User selections and/or interests are monitored, stored, and updated on the basis of feedback received from the user. Yourick does not teach ranking the likely degree of interest a user has in particular item(s). However, a score or trend in the user's feedback or interest is deduced and later used to predict which items should be presented to the user in a sorted order. Table 8 illustrates the user's interest in ascending order. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to rank the degree of a user's interest in an item because

Yourick's trend prediction is a direct indication of the degree of interest a user has while previewing the presented items at the terminal device.

With regard to claims 51, 52, 59, and 60 Yourick teach a system and method for automatically presenting created content profiles or video programs for each item of interest to users. Customer profiles are created based on user preferences and interests. The profiles are monitored and automatically updated based on customer preference of items. Yourick do not teach indicating the degree of content in each content profile(data source). Yourick does teach that the items of interest are patterns which are relative to the item profile. Further, these patterns are updated and stored as an item's consumer attributed information. When the user requests to view items having certain attributes the system retrieves related or similar items of interest from memory. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to indicate the degree of content of an item profile because the user is permitted to view items sharing the same attributes or degree of likenesses.

With regard to claims 54 and 63, Yourick does not teach updating customer profiles to reflect the frequency of selection of the content profiles. Yet, Yourick does reorder or score the profiles in an order of user interest as depicted in table 8 and column 8, lines 59+. Also, in column 4, lines 10-11, Yourick teaches recording the frequency of inspection of an item to recognize a user's interest. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to reflect the frequency of selection of content profiles because Yourick ranks the profiles viewed by users according their likely predicted interest in the item inspected by the user.

4. Claims 35-39, 40-46, and 47-65 of this application have been somewhat copied by the applicant from U. S. Patent No(s): 5,724,567; 5,758,257; and 5,754,939, respectively. These claims are not patentable to the applicant because of the 35 U.S.C. §112, 1st paragraph rejection and the 35 U.S.C. §103 rejection above.

An interference cannot be initiated since a prerequisite for interference under 37 C.F.R. §1.606 is that the claim(s) be patentable to the applicant subject to a judgement in the interference.

5. Claims 35-39, 40-46, and 47-65 of this application are asserted by applicant to correspond to all claim(s) of U.S. Patent No(s): 5,724,567; 5,758,257; and 5,754,939, respectively.

The examiner does not consider these claims to be directed to the same invention as that of U.S. Patent No(s): 5,724,567; 5,758,257; and 5,754,939 because:

U.S. Patent 5,724,567 invented: A system for directing relevance-ranked data objects to computer users;

U.S. Patent 5,758,257 invented: A system and method for scheduling broadcast of and access to video programs and other data using customer profiles;

U.S. Patent 5,754,939 invented: A system for generation of user profiles for a system for customized electronic identification of desirable objects;

In contrast, the applicant's claimed invention: An adaptive pattern recognition based controller apparatus and method and human-factored interface therefore.

Accordingly, an interference cannot be initiated based upon these claims.

6. Applicant's arguments filed January 28, 2003 have been fully considered but they are not persuasive.

The 35 U.S.C. §112, second paragraph rejection of claim 60 has been corrected by the amendment.

The 35 U.S.C. §112, first paragraph rejection as applied to claims 35, 40, 47, 55, and 58 is withdrawn based on the example and argument submitted.

The 35 U.S.C. §112, first paragraph rejection as applied to claims 36-39, 41-46, 48-54, 56, 57, 59-65 is maintained. The applicant focused their response to only their independent claims and presented Example 2 in support for the language therein. However, the response did not provide support for the subject matter in the dependent claims. No ranking of a likely degree of interest for each available item of information is related(claim 36); no target objects or user target profile summaries are automatically generated(claims 48 and 56); no creating of content profiles...indicating a degree of content of predetermined characteristics are created(claims 51, 52, 59, 60, and 64); no customer profile is updated to reflect a frequency of selection of data items(claim 54). It should be noted the entire specification was reviewed for this subject matter and could not be found. This claim language is important because the

patents from which the subject matter was copied include it in their independent claims rather than their dependent claims like applicant.

The 35 U.S.C. §102(b) rejection is withdrawn in favor of the newly necessitated 35 U.S.C. §103(a) rejection above. In particular, the feature of including a persistent user or customer profile is now obvious in view of the applied prior art above.

The request for the reconsideration of the restriction requirement is acknowledged. The MPEP section referred to by applicant (MPEP §2303.01) addresses possible interferences on nonelected subject matter. Every situation illustrated in this section pertains to two or more patent applications under examination which claim the same invention. None of these situations represent the applicant's current situation, hence this MPEP section is not applicable in the present examination proceedings.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. §1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R. §1.136(a) will be calculated from the mailing date of the advisory action. In no

event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Gordon whose telephone number is (703) 305-9760. The examiner can normally be reached on Mondays through Thursdays from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee, can be reached at (703) 305-8498. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

  
PAUL P. GORDON  
PRIMARY EXAMINER

PPG  
April 7, 2003